

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 23, 2021 at 1:30 p.m.

1.	<u>19-22653-E-7</u> REECE/RODINA VENTURA <u>19-2156</u> GAUNIA V. VENTURA ET AL	CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT TO DETERMINE DISCHARGEABILITY OF A DEBT 12-22-19 [1]
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Plaintiff's Atty: Michael J. Harrington
Defendants' Atty: Peter G. Macaluso

Adv. Filed: 12/22/19
Answer: 1/20/20

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Continued from 3/3/21. Parties to file supplements to their Pre-Trial Conference Statements on or before 3/12/21.

Defendants' Supplemental Pretrial Statement filed 3/11/21 [Dckt 26]

The Pre-Trial Conference is concluded and removed from the Calendar, the court setting trial in this matter for August **xxxxxxx, 2021, commencing at **xxxxxxx x.m.****

March 3, 2021 Pre-Trial Conference

The court continues the Pre-Trial Conference for the parties to file supplements to their Pre-Trial Conference Statements specifically identifying witnesses, exhibits, and points of law.

SUMMARY OF COMPLAINT

Adela Bon Gaunia (“Plaintiff”) seeks to obtain a judgment determining that obligation resulting from Plaintiff’s employment by Defendant-Debtor, directly or by one of Defendant-Debtor’s corporations operating care facilities, is non-dischargeable. Plaintiff asserts that Defendant-Debtor did not comply with California wage and employment laws including the proper withholding of taxes. Plaintiff filed and was prosecuting a state court action asserting such claims, which was pending when Defendant-Debtors commenced their Chapter 7 bankruptcy case. Plaintiff asserts that the obligations are nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6).

SUMMARY OF ANSWER

Reece Ventura and Rodina Ventura (“Defendant-Debtor”) have filed an Answer (Dckt. 6), admitting and denying specific allegations.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Adela Bon Gaunia alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant Reece Ventura and Rodina Ventura admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 3, 4; Dckt. 6. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

The Parties in their respective Pretrial Conference Statements, Dckts. 23, 21, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)

Defendant(s)

Jurisdiction and Venue:

Plaintiff Adela Bon Gaunia alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant Reece Ventura and Rodina Ventura admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 3, 4; Dckt. 6.

To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

<p>Undisputed Facts:</p> <ol style="list-style-type: none"> 1. Debtors owned and operated several disabled children care home businesses known as RML Children's Home, Inc., a California Corporation, and its successor corporation, RML Care Group, Inc. 2. RML Children's Home, Inc. was a corporation formed in California later cancelled. 3. RML Children's Home, Inc. was a corporation formed in California later dissolved. 4. Both corporations were underfunded. 5. Debtors and RML Children's Care Home, Inc. hired Plaintiff on or about 2013 until she left in 2015, as a live-in caregiver at several of Debtor's two care home locations. 6. On October 5, 2016 Plaintiff filed a complaint for damages in Sacramento County Superior Court, <i>Gaunia v. RML Children's Home, Inc.</i>, the two Debtors, and related family business members and family companies. The complaint sued, inter alia, for damages for failure to pay minimum wages, overtime compensation, meal and break periods, various penalties, and interest on unpaid wages. 7. Debtors failed to pay minimum wages. 8. Debtors failed to pay overtime. 9. Debtors improperly treated Plaintiff as an independent contractor and failed to pay employer share of taxes or other government requirements. 	<p>Undisputed Facts:</p> <ol style="list-style-type: none"> 1. Plaintiff was hired as a caretaker in the Manteca home. 2. Plaintiff was part of an immigrant's rights group, and knew about her employment rights. 3. Plaintiff was hired in 2013, and soon became romantically involved with Benjamin Villanueva until March of 2015. 4. Plaintiff did not reside at the care home, and was not a "live-in" caregiver. 5. Debtors and RML Children's Care Home, Inc. hired Villanueva in 2009 until he was fired in November of 2015. 6. Plaintiff provided a Social Security number that was rejected by ADP. 7. Plaintiff was paid in full, and gave a two-week notice before leaving. 8. Plaintiff was thereafter employed by Attorney Harrington as a housekeeper (independent contractor). 9. In September of 2015, Villanueva was reported to have been abusing the resident disabled children in his care ("Minor(s)"). 10. Villanueva repeatedly screamed at the Minors. 11. Villanueva was caught on video violently striking a Minor with his hand. 12. Plaintiff was terminated. 13. Defendants made a report to the Sacramento City Police, Alta Regional
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10.	Plaintiff worked live-in shifts for 24 hour periods, details to be provided in a summary of claim and damages. See Proof of Claim.		Ctr., and the State of CA Dept. Of Social Services.
11.	"At the beginning of Plaintiff's employment and continuously through the end, [Debtors] represented to Plaintiff that she would be provided lawful pay and working conditions. Defendants represent to Plaintiff that her paychecks conformed to law, and was paid properly and legally pursuant to law." AP Complaint, para. 17, p. 3:15-18. This was admitted in Debtors' Answer. Plaintiff accepted Debtors' representations.	14.	Defendants child care homes were licensed pursuant to CA Health and Safety Code of CA, and regulated by the CA Dept. of Social Services to provide health care to minor patients.
12.	Debtors, as the owners of the company and as the administrators of the employees, including Plaintiff, are personally responsible for the unpaid wages, penalties, interest and punitive damages.	15.	On November 25, 2015, Plaintiff filed a complaint for damages in Sacramento Superior Court, Villanueva v. RML Children's Home, Inc., the two Debtors, and related family business members and family companies. The complaint sued, inter alia, for damages for failure to pay minimum wages, overtime compensation, meal break periods, various penalties, and interest on unpaid wages.
		16.	In a demurrer filed February 5, 2016, all defendants (including Debtors) made a general appearance by and through their attorneys of record, Steven L. Simas, Justin D. Hein, and Simas and Associates, Ltd. a litigation firm practicing in the Sacramento area.
		17.	Shortly after the demurrer was filed, counsel began to discuss settlement, and agreed to mediation with Russ Wunderli at his offices in Roseville, CA.
		18.	On August 24, 2018, Debtors filed Chapter 13 bankruptcy, Case No. 18-25342.
		19.	On August 26, 2018, Plaintiff received actual notice of automatic stay.
		20.	Case No. 18-25342 was dismissed on February 2, 2019.
		21.	On April 28, 2019, the Debtors filed a second Chapter 13 to keep the care home open for the Minors whom resided there.

	<p>22. During the pending Chapter 13, Debtors made several significant offers to Plaintiff that were rejected.</p> <p>23. On April 30, 2019, the automatic stay in Case No. 19-22653 arose.</p> <p>24. On May 24, 2019, the Debtors' Motion to Extend the Automatic Stay was denied.</p> <p>25. On May 28, 2019, the Debtors' Automatic Stay expired.</p>
<p>Disputed Facts:</p> <ol style="list-style-type: none"> 1. Plaintiff was an employee of Debtors and her LLC, rather than an independent contractor. 2. Debtors owed, and was aware of the law requiring her to pay, Plaintiff for overtime worked, breaks and meal breaks. 3. Plaintiff worked substantial overtime, for which she was not paid overtime. 4. Debtors were exempt from meal and break time requirements. 5. Debtors misrepresented Plaintiff's employment status therefore avoiding paying the employer's share of withholding taxes and other benefits. 6. Debtors misrepresented the wages due under California law so as to underpay Plaintiff. 7. Debtors intentionally prepared or failed to prepare accurate wage statements so as to underpay Plaintiff, resulting in substantial underpayment of wages. 8. Debtors' actions caused Plaintiff to receive less than she was lawfully entitled to in wages and benefits. 	<p>Disputed Facts:</p> <ol style="list-style-type: none"> 1. Whether both corporations were properly funded. 2. Whether Plaintiff was paid for all hours worked. 3. Whether Plaintiff was required to sleep at the facility as part of her employment. 4. That Plaintiff is not owed for overtime or double-time. 5. Whether Plaintiff is entitled to any overtime. 6. Whether Defendants made any false representations to Plaintiff. 7. Whether Plaintiff intended to not comply with any applicable law. 8. Whether Debtors owed, and were aware of the requirement to pay Plaintiff, for overtime, breaks and meal breaks. 9. That Plaintiff was paid for all hours worked, and this action was brought in bad faith as retaliation for the termination of Villanueva. 10. That there were no disputes as to wages until Villanueva was terminated.

9.	Debtors' actions were intentional and willful.	11.	That Villanueva assaulted a Minor resident in his care.
10.	Debtors made material misrepresentations during the period from 2013 to 2015 with regard to classification and wages paid to Plaintiff to induce her to work for Debtors and their businesses.	12.	That Villanueva became mentally and physically abusive to the Minor residents.
		13.	Whether Defendants made any false statements to Plaintiff.
		14.	Whether such statements, if any, represented an intent to not lawfully pay Plaintiff.
		15.	Whether such statements, if any, represented an intent to not provide lawful working conditions.
		16.	Whether Defendants intended to not comply with applicable law as to wages or working conditions.
		17.	Whether Defendants underpaid withholding taxes.
		18.	Whether Plaintiff incurred damages as asserted.
		19.	Whether Plaintiff incurred any damages due to the Defendants' willful and intentional misconduct.
		20.	Whether Defendants misrepresented Plaintiff's employment status in order to increase profits.
		21.	Whether such misrepresentation, if any, was to the extreme detriment of Plaintiff.
		22.	Whether such misrepresentation, if any, was done with larcenous intent.
		23.	That Defendants' actions were not willful nor malicious.

	<p>24. Whether Defendants intentionally misrepresented their intent to settle this case.</p> <p>25. That Plaintiff had actual knowledge that on April 29, 2019, the automatic stay arose in Case No. 19-22653.</p> <p>26. That Plaintiff had actual Notice of Stay prior to recording the Abstract of Judgment.</p> <p>27. Whether this action was brought in bad faith.</p>
<p>Disputed Evidentiary Issues:</p> <p>1. Matters pertaining to claims being asserted by Villanueva (who Plaintiff identifies as a “Co-Plaintiff in related AP case.”</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None Identified</p>
<p>Relief Sought:</p> <p>1. Determination that \$190,348.77, plus interest, fees and expenses is nondischargeable pursuant to 11 U.S.C. § 524(a)(2), (4), (6).</p>	<p>Relief Sought:</p> <p>1. Determination that the debt is dischargeable.</p> <p>2. Determination that Plaintiff is acting in bad faith in bringing this action, pursuant to Labor Code 218.5.</p>
<p>Points of Law:</p> <p>1. 11 U.S.C. 523(a)(2), (4), and (6)</p> <p>2. 11 U.S.C. 523(d) is not applicable to this wage claim.</p> <p>3. Labor Code 512, 226.7, and 1198, and other applicable Labor Code sections</p> <p>4. Industrial Welfare Commission Order 5-2001, Sections to include but not limited to 3, 4 and 11.</p>	<p>Points of Law:</p> <p>1. 11 U.S.C. 362(a)(2) <i>In re Shannon</i> (9th Cir. B.A.P. 2016) 553 BR 380, 388; <i>In re Sabbon</i> (9th Cir. 2010) 600 F.3d 1219, 1222: Elements of nondischargeable fraud.</p> <p>2. 11 U.S.C. 523(a)(4), <i>U.S. Dept. Of Labor v. Harris (In re Harris)</i>, 898 F.3d 834 (8th Cir. Aug. 3, 2018)</p> <p>3. 11 U.S.C. 523(a)(6), <i>Trost v. Trost (In re Trost)</i>, No. 17-1877, 2018 WL 2437200</p>

	<p>(6th Cir. May 30, 2018) (unpublished): “Willful and Malicious”</p> <ol style="list-style-type: none"> 4. Labor Code 90.5(a), 201-204, 206.5, 218.5, 221, 223, 226(a-f), 226.7, 226.8, 450, 512, 1174, 1197, 1198, and other applicable Labor Code sections. 5. Industrial Welfare Commission Order 5-2001, Sections 3, 4, and 11, and Section 11(D)-waiver 6. CA Penal Code 240 (Assault) 7. CA B&P Code 17200 8. CCP 685.040 9. AB-5, Ch. 296, effective 1/1/20 10. ABC Test
<p>Abandoned Issues:</p> <ol style="list-style-type: none"> 1. None Identified 	<p>Abandoned Issues:</p> <ol style="list-style-type: none"> 1. None Identified
<p>Witnesses:</p> <ol style="list-style-type: none"> 1. Benjamin Villanueva 2. Unidentified “co-worker”s of Plaintiff at the care home facilities 3. Reece Rodina 4. Rodina Ventura 5. Designated Representative of RML Children’s Home, Inc re corporate and settlement issues. 6. Designated Representative of RML Care Group, Inc. re corporate and settlement issues., 7. Tido Thac Hoang and Tido Financial, 	<p>Witnesses:</p> <ol style="list-style-type: none"> 1. Reece Ventura 2. Rodina Ventura 3. Benjamin Villanueva 4. Adela Bon Gaunia

<p>and Justin Hein, Esq.</p> <p>8. Seven L. Simas, Esq., or other designee of Simas and Associates, Ltd.</p> <p>9. Plaintiff's Expert Witness, Michael Bilger, or back-up expert, LaTroya Brown.</p> <p>10. Lianju Sun, PhD, Plaintiff's expert.</p>	
<p>Exhibits:</p> <p>1. Complaint in this Adversary Proceeding.</p> <p>2. Defendant's Answer.</p> <p>3. Amended Claim filed 3/16/21.</p> <p>4. Selected pleadings, motion papers, orders, and exhibits from state court action.</p> <p>5. Filings by Defendant-Debtor or the two corporations with the Secretary of State.</p> <p>6. Documents submitted by all parties and counsel to Russ Wunderli Mediation for the mediation that resulted in the settlement of \$125,000.</p> <p>7. Emails and correspondence exchanged between counsel before and after the mediation at Wunderli Mediation Offices.</p> <p>8. Signed Mediator's Settlement Agreement</p> <p>9. Signed Long Form Settlement Agreement</p> <p>10. Signed Stipulation for Entry of Judgment After Default and Ten Days Notice</p>	<p>Exhibits:</p> <p>1. Debtors' petition in Case No. 18-25342</p> <p>2. Debtors' petition in Case No. 19-22653</p> <p>3. Docket for Case No. 18-25342</p> <p>4. Docket for Case No. 19-22653</p> <p>5. Civil Court Settlement Agreement</p> <p>6. Plaintiff's Proof of Claim</p> <p>7. Settlement Agreement and Release of All Claims</p> <p>8. Docket #201904301544, filed 4/30/19, Sacramento County Recorder, Abstract of Judgment, Involuntary Lien, pursuant to Case No. 34-2015-00187237.</p> <p>9. Any court filings in either of the two State Court actions.</p> <p>10. Various employment and wage records relating to Plaintiff.</p> <p>11. Internal film of Plaintiff in violation of CA Penal Code 240 (Assault).</p>

11. Banking records from Debtors or their two corporations 12. DSS documents concerning the emergency shut down of Defendants' two care homes for falsifying care home documents concerning the treatment and safety of the resident children (shows pattern and practice of Defendants) 13. Payroll documents 14. Facility staffing schedules 15. Employee filed 16. California Wage Order 5-2001, as amended 17. Employee W-2, 1099s 18. Various opinion letters from the Office of General Counsel, Labor Commissioner, interpretations various wage and hour laws and factual situations for care homes 19. Plaintiffs bank statements and records showing payroll and evidence of employment	
Discovery Documents: 1. Deposition testimony of Rodina Ventura, and selected marked exhibits 2. Deposition testimony of Reece Ventura, and selected marked exhibits 3. Discovery - Requests for Production, propounded to and responded by Reece Ventura 4. Discovery - Requests for Production, propounded to and responded by	Discovery Documents: 1. Included in Exhibits Above.

Rodina Ventura	
5. Discovery - Requests for Production, propounded to and responded to by All defendants in state court action	
Further Discovery or Motions:	Further Discovery or Motions:
1. None Identified	1. None Identified
Stipulations:	Stipulations:
1. None Identified	1. None Identified
Amendments:	Amendments:
1. None Identified	1. None Identified
Dismissals:	Dismissals:
1. None Identified	1. None Identified
Agreed Statement of Facts:	Agreed Statement of Facts:
1. None Identified	1. None Identified
Attorneys' Fees Basis:	Attorneys' Fees Basis:
1. CLC §§ 218.5, 226(f), 1194 (a),	1. CLC Section 218.5, 226(f), and 1194(a)
2. CCP 1021, CCP 685.040, 695.080	2. CCP 1021, 685.040 and any other applicable provision.
3. Any other applicable provisions.	
4. Plaintiff also requests that the court defer the issue of attorney's fees until the litigation is completed, and that the court allow the state court determine the award of attorney's fees for this Adversary Proceeding- Fed. R. Civ. P. 54, Fed. R. Bankr. P. 7054.	

<p>Additional Items</p> <p>1. Plaintiff requests that the court “assign” a Tagalog-English Interpreter.</p> <p>For civil matters in bankruptcy court the parties provide their own interpreters.</p>	<p>Additional Items</p> <p>1. None Identified</p>
<p>Trial Time Estimation: Three (3) Days, with requested trial in July or August 2021.</p>	<p>Trial Time Estimation: Three (3) Days</p>

2. [19-22653-E-7](#) REECE/RODINA VENTURA
[19-2157](#)
VILLANUEVA V. VENTURA ET AL

CONTINUED PRE-TRIAL
CONFERENCE RE: COMPLAINT TO
DETERMINE DISCHARGEABILITY OF
A DEBT
12-22-19 [1]

Plaintiff's Atty: Michael J. Harrington, Cindy Lee Hill
Defendants' Atty: Peter G. Macaluso

Adv. Filed: 12/22/19
Answer: 1/20/20

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Continued from 3/3/21. Parties to file supplements to their Pre-Trial Conference Statements on or before 3/12/21.

Defendants' Supplemental Pretrial Statement filed 3/11/21 [Dckt 26]

The Pre-Trial Conference is concluded and removed from the Calendar, the court setting trial in this matter for September ~~xxxxxxx~~, 2021, commencing at ~~xxxxxxx~~ x.m.

March 3, 2021 Pre-Trial Conference

The court continues the Pre-Trial Conference for the parties to file supplements to their Pre-Trial Conference Statements specifically identifying witnesses, exhibits, and points of law.

SUMMARY OF COMPLAINT

Benjamin Villanueva ("Plaintiff") seeks to obtain a judgment determining that obligation resulting from Plaintiff's employment by Defendant-Debtor, directly or by one of Defendant-Debtor's corporations operating care facilities, is nondischargeable. Plaintiff asserts that Defendant-Debtor did not comply with California wage and employment laws including the proper withholding of taxes. Plaintiff filed and was prosecuting a state court action asserting such claims, which was pending when Defendant-Debtors commenced their Chapter 7 bankruptcy case. Plaintiff asserts that the obligations are nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6).

SUMMARY OF ANSWER

Reece Ventura and Rodina Ventura (“Defendant-Debtor”) have filed an Answer (Dckt. 6), admitting and denying specific allegations.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Benjamin Villanueva alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant Reece Ventura and Rodina Ventura admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 3, 4; Dckt. 6. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

The Parties in their respective Pretrial Conference Statements, Dckts. 23 and 28; 21 and 26; and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)	Defendant(s)
<p>Jurisdiction and Venue:</p> <p>Plaintiff Benjamin Villanueva alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant Reece Ventura and Rodina Ventura admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 3, 4; Dckt. 6. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.</p>	
<p>Undisputed Facts:</p> <ol style="list-style-type: none">Debtors owned and operated several disabled children care home businesses known as RML Children's Home, Inc., a California Corporation, and its successor corporation, RML Care Group, Inc.RML Children's Home, Inc. was a corporation formed in California later cancelled.RML Children's Home, Inc. was a	<p>Undisputed Facts:</p> <ol style="list-style-type: none">The Plaintiff was hired at the minimum rate, which was \$8.00 per hour.Plaintiff was not hired as a live-in care-giver.Plaintiff developed a drinking problem.Plaintiff asked Defendants if he could reside in the break room temporarily.

	corporation formed in California later dissolved.	5. Plaintiff did not get another place to live.
4.	Both corporations were underfunded.	6. Defendants didn't require Plaintiff to cook.
5.	Debtors and RML Children's Care Home, Inc. hired Plaintiff on or about 2009 until he left in 2015, as a live-in caregiver at several of Debtor's two care home locations, and related family property doing property maintenance.	7. Plaintiff's shift was 2:00 p.m. to 10:00 p.m., Tuesday though Saturday.
6.	On November 25, 2015, Plaintiff filed a complaint for damages in Sacramento County Superior Court, <i>Villanueva v. RML Children's Home, Inc.</i> , the two Debtors, and related family business members and family companies. The complaint sued, inter alia, for damages for failure to pay minimum wages, overtime compensation, meal and break periods, various penalties, and interest on unpaid wages.	8. In September of 2015, Plaintiff was reported to have been abusing the disabled children in his care ("Minor(s)").
7.	In a demurrer filed on February 5, 2006, all defendants (including Debtors) made a general appearance by and through their attorneys of record, Steven L. Simas, Justin D. Hein, and Simas and Associates, Ltd., a litigation firm practicing in the Sacramento area.	9. Plaintiff repeatedly screamed at Minors.
8.	Shortly after the demurrer was filed, counsel began to discuss settlement, and agreed to a mediation with Russ Wunderli at his offices in Roseville, California.	10. Plaintiff was caught on video violently striking a Minor with his hand.
9.	On April 12, 2016, Plaintiff and his counsel, Michael J. Harrington, attended mediation with Russ Wunderli, Debtors, RML Children's Home, Inc, and their counsel, Justin Hein. A settlement was reached for a total of \$125,000. All parties and counsel present signed the Mediator's short form Settlement Agreement, to be paid in five \$25,000 installments beginning about 60 days after the mediation.	11. Plaintiff was terminated.
		12. Defendants made a report to the Sacramento City Police, Alta Regional Ctr., and the State of CA Dept. Of Social Services.
		13. Defendants child care homes were licensed pursuant to CA Health and Safety Code of CA, and regulated by the CA Dept. Of Social Services to provide health care to minor patients.
		14. On August 24, 2018, Debtors filed Chapter 13 bankruptcy, Case No. 18-25342.
		15. On August 26, 2018, Plaintiff received actual notice of automatic stay.
		16. On December 3, 2018 counsel for Plaintiff filed a Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor [CLH-4].
		17. Case No. 18-25342 was dismissed on

10.	On or about April 22, 2016, the long-form Settlement Agreement was signed by Debtors as individuals, and on behalf of RML Children's Home, Inc.	February 2, 2019.
11.	On or about April 20, 2016, the parties also entered into a Stipulation for Entry of Judgment After Default, for \$125,000.	18. On April 28, 2019, the Debtors filed a second Chapter 13 to keep the care home open for the Minors whom resided there.
12.	Unbeknownst to Plaintiff or his counsel, Debtors had employed a local financial advisor and tax consultant, Tido Thac Hoang, EA, to register a new corporation, RML Care Group, Inc. for Debtors to operate the two care homes. He registered the new corporation with the California Secretary of State on April 25, 2016, or 13 days after the mediation, and before the first payment was due.	19. During the pending Chapter 13, Debtors made several significant offers to Plaintiff that were rejected.
13.	Soon after that, the Debtors defaulted, and refused to cure the default or make other arrangements to pay their obligation to Plaintiff.	20. On August 7, 2019, a Notice of 2nd Amended Judgment was recorded.
14.	On July 12, 2018, Creditor Villanueva obtained a Stipulation for Judgment against Debtors for \$125,000. Creditor Villanueva filed a Motion for Leave to Amend the Judgment to include a successor corporation, RML CHILDREN CARE GROUP, INC. That motion was granted by Judge Brown, and the case history and issues up to that time are fairly and accurately summarized in his Order dated October 8, 2018. (Exh. 1)	21. No relief from 11 U.S.C. 362(a) was granted.
15.	Creditors then filed their Motion for Award of Attorneys Fees and Costs, and that motion was granted in August, 2019, and the judgment was amended to include them, for a total judgment of \$333,446.20.	22. On April 30, 2019, the Plaintiff recorded an Abstract of Judgment on Real Property, commonly known as 10171 McCarron Blvd., Sacramento, CA 95829, Docket #201904301544, by Creditor Villanueva at 430 D. St. Davis, CA c/o Michael Harrington.
16.	As was concluded by the Court, "the motion to amend is granted to allow adding the successor corporation as a judgment debtor. Plaintiff has shown that RML Care Group, Inc. has the same officers as the prior	23. On April 30, 2019 the automatic stay in Case No. 19-22653 arose.
		24. On May 24, 2019, the Debtors' Motion to Extend Automatic Stay was denied.
		25. On May 28, 2019, the Debtors' Automatic Stay expired.

<p>corporation. The certificate of dissolution of RML Children's Home, Inc. contained false information that the corporation had no debtors or liability, three days after it signed the stipulating it owned plaintiff \$125,000." Order Granting Motion to Amend Judgment to Add Additional Judgment Debtors as Successor in Interest, filed October 2, 2018. (Exh. 2) These facts are final. The Order was not appealed, and the trial court concluded that Debtors lied about their lack of debts when they dissolved the corporation that signed the settlement agreement.</p> <p>17. It is undisputed that Plaintiff holds a claim against Debtors in the amount of \$125,000, plus the accrued interest, penalties and attorneys fees, in the amount of the Second Amended Judgment in the amount of \$333,446.20, entered on August 5, 2019, (Exh. 2) They settled the case; signed two Settlement Agreements; signed a Stipulation for Judgment After Default, for \$125,000; failed to oppose the Motion for Leave to Amend the Judgment to include the successor corporation, and lost the motion; failed to oppose the Motion for Attorneys Fees and Costs, and lost that motion. No appeal to any of these losses was filed in state court; the Court's orders and judgments against defendants are final.</p>	
<p>Disputed Facts:</p> <p>1. Whether Debtors are liable subject to 11 U.S.C. § 523(a)(2) for: signing two Settlement Agreements and the Stipulation for Judgment After Default and falsely and recklessly misrepresenting that Debtors had the financial means to pay, and intended to pay, the settlement amounts on the terms stated in the three signed agreements, and misled Plaintiff into signing the three agreements and releasing his claims against Debtors.</p> <p>2. Whether Debtors are liable subject to 11</p>	<p>Disputed Facts:</p> <p>1. Whether both corporations were properly funded.</p> <p>2. Whether Plaintiff was paid for all hours worked.</p> <p>3. That Plaintiff was paid for all overtime worked, if any.</p> <p>4. Whether Plaintiff was required to sleep at the facility when not on his 2:00 p.m. to 10:00 p.m. shift.</p>

<p>U.S.C. § 523(a)(4) for fraud;</p> <p>3. Whether Debtors are liable subject to 11 U.S.C. § 523(a)(6) for willful and malicious injury by Debtors to Plaintiff in leading them to reduce his much larger claim for unpaid wages down to \$125,000 in exchange for a fast payment plan.</p> <p>4. The amount of the claim.</p>	<p>5. That Plaintiff is not owed for any double-time.</p> <p>6. That Plaintiff was required to remain in the facility to watch over, care for, and supervise the Minors from 2:00 p.m. to 10:00 p.m., Tuesdays through Saturday.</p> <p>7. That Plaintiff was required to work a 19-hour split-shift supervision and care of residents from 2:00 p.m. to 9:00 a.m. the following day; whereby “sleep time” was permitted to be deducted from actual hours worked, and remain in the facility under the control of Defendants.</p> <p>8. Whether Plaintiff is entitled to any overtime.</p> <p>9. That Plaintiff was not hired as a “live-in caregiver.”</p> <p>10. That Plaintiff was not hired to do property maintenance.</p> <p>11. That Defendants did not require Plaintiff to work in excess of the maximum number of hours fixed by the IWC Order 5-2001, Section 3 and 4, nor did they violate Labor Code Section 1198.</p> <p>12. That Plaintiff was not required to cook for the minors.</p> <p>13. That Plaintiff was not required to remain “inside and stay at the facility” other than Tuesday through Saturday, 2:00 p.m. to 10:00 p.m.</p> <p>14. That Plaintiff was given more than the minimum required breaks, as Plaintiff took frequent smoke breaks.</p> <p>15. Whether Defendants made any false representations to the Plaintiff.</p>
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	<p>16. Whether the Defendants intended to comply with any applicable law as to wages or working conditions.</p> <p>17. Whether Defendants were notified that any compensation scheme offered failed to pay wages in accordance with California law.</p> <p>18. Whether the Debtors had any actual superior knowledge and special information with regard to any representation to Plaintiff.</p> <p>19. That there were no disputes as to working conditions prior to Plaintiff being fired for assaulting a Minor.</p> <p>20. Whether Plaintiff assaulted a Minor resident of the facility in September of 2015.</p> <p>21. Whether Plaintiff was terminated for assaulting a Minor resident of the facility in 2015.</p> <p>22. Whether the Debtors lied about “their” lack of debts when they dissolved the corporation that signed the settlement agreement.</p> <p>23. Whether Defendants made any false statements to Plaintiff.</p> <p>24. Whether any statements made by Defendants to Plaintiff represented an intent to not lawfully pay Plaintiff.</p> <p>25. Whether Defendants underpaid withholding taxes.</p> <p>26. Whether Plaintiff incurred damages as asserted.</p> <p>27. Whether Plaintiff incurred any damages due to the Defendants’ willful and intentional misconduct.</p>
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	<p>28. Whether Defendants misrepresented Plaintiff's employment status in order to increase profits.</p> <p>29. Whether such misrepresentation, if any, was to the extreme detriment of Plaintiff.</p> <p>30. Whether such misrepresentation, if any, was done with larcenous intent.</p> <p>31. That Defendants' actions were not willful nor malicious.</p> <p>32. Whether Defendants intentionally misrepresented their intent to settle this case.</p> <p>33. That Plaintiff had actual knowledge that on April 29, 2019, the automatic stay arose in Case No. 19-22653.</p> <p>34. That Plaintiff had actual Notice of Stay prior to recording the Abstract of Judgment.</p> <p>35. Whether Plaintiff violated 11 U.S.C. 362(a) by recording an Abstract Judgment on April 30, 2019, without obtaining relief of the automatic stay.</p> <p>36. That the automatic stay for Case No. 19-22653 expired May 28, 2019.</p> <p>37. That Plaintiff has not released the Abstract of Judgment as of March 5, 2021, clouding title.</p> <p>38. Whether Plaintiff remains in violation of 11 U.S.C. 362(a) by recording, and not releasing, the Abstract of Judgment against the Defendants' real property.</p> <p>39. Whether Plaintiff is liable pursuant to 11 U.S.C. 362(k).</p>
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	<p>40. Whether this action was brought in bad faith.</p> <p>41. That Debtors' conduct does not involve bad faith, moral turpitude, or other immoral conduct.</p> <p>42. That Debtors' conduct was not reckless.</p> <p>43. That Debtors' conduct was not done with conscious disregard to the standard of conduct that other care homes operated under.</p> <p>44. That Debtors did not deceive the Plaintiff into forbearing collection efforts.</p> <p>45. That Plaintiff did not justifiably rely on Debtors' statements and representations.</p> <p>46. That Plaintiff was free from the control and direction of the Debtors in connection with the performance of his work.</p> <p>47. That Plaintiff customarily engages in independent contractor positions in the same nature as the work performed for Debtors.</p>
<p>Disputed Evidentiary Issues:</p> <p>1. Defendants' Pretrial Statement is chock full of irrelevant issues and personal attacks on Plaintiff.</p> <p>2. How much in stolen wages? A lot, but not relevant; that boat sailed at the mediation in April 2016.</p> <p>3. The matter of liability and damages has already been decided via the stipulated judgment.</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None Identified.</p>

<p>4. The attorney's fees and costs were already decided after the unopposed motion was granted.</p> <p>5. The only issue for this trial is whether the fixed, stipulated debt is dischargeable in bankruptcy.</p>	
<p>Relief Sought:</p> <p>1. Determination that the amount of the obligation owed to Plaintiff is \$125,000, plus interest, penalties, and attorney's fees in the amount of \$333,446.20, as of August 5, 2019, plus subsequent accrued interest, penalties, and attorney's fees, and said amounts are not dischargeable pursuant to:</p> <p style="padding-left: 40px;">11 U.S.C. 523(a)(2),</p> <p style="padding-left: 40px;">11 U.S.C. § 523(a)(4), and/or</p> <p style="padding-left: 40px;">11 U.S.C. § 523(a)(6).</p> <p>As Exh. 1 is a true and correct copy of Plaintiff's filed Proof of Claim.</p> <p>2. Such obligation is nondischargeable.</p>	<p>Relief Sought:</p> <p>1. Determination that the debt is dischargeable.</p> <p>2. Determination that Plaintiff is in violation of 11 U.S.C. 362(a).</p> <p>3. Determination that Defendants have an offsetting claim, pursuant to 11 U.S.C. 362(k).</p>
<p>Points of Law:</p> <p>1. 11 U.S.C. § 523(a)(2), (4), (6).</p> <p>2. 11 U.S.C. § 523(d) not being applicable to a wage claim.</p>	<p>Points of Law:</p> <p>1. 11 U.S.C. 362(a)(2) <i>In re Shannon</i> (9th Cir. B.A.P. 2016) 553 BR 380, 388; <i>In re Sabbon</i> (9th Cir. 2010) 600 F.3d 1219, 1222: Elements of nondischargeable fraud.</p> <p>2. 11 U.S.C. 523(a)(4) <i>U.S. Dept. Of Labor v. Harris (In re Harris)</i>, 898 F.3d 834 (8th Cir. Aug. 3, 2018)</p> <p>3. 11 U.S.C. 523(a)(6) <i>Trost v. Trost (In re Trost)</i>, No. 17-1877, 2018 WL 2437200 (6th Cir. May 30, 2018) (unpublished): "Willful and Malicious"</p>

	<p>4. Labor Code 512, 226.7, 218.5, and 1198</p> <p>5. Industrial Welfare Commission Order 5-2001, Sections 3, 4, and 11.</p> <p>6. CA Penal Code 240 (Assault)</p> <p>7. Labor Code 218.5</p>
<p>Abandoned Issues:</p> <p>1. None Identified</p>	<p>Abandoned Issues:</p> <p>1. None Identified</p>
<p>Witnesses:</p> <p>1. Benjamin Villanueva</p> <p>2. Adela Gaunia, “Co-Plaintiff in Related AP”</p> <p>3. Michael J. Harrington, Counsel for Plaintiff (only as to default issues)</p> <p>4. Reece Rodina</p> <p>5. Rodina Ventura</p> <p>6. Designated Representative of RML Children’s Home, Inc., re corporate formation process and history, operation, management of employees, schedules, payroll, and employment of Plaintiff and his Co-Plaintiff, settlement with Benjamin Villanueva, and corporate dissolution.</p> <p>7. Designated Representative of RML Care Group, Inc., re: corporate formation process and history, and settlement with Benjamin Villanueva</p> <p>8. Tido Thac Hoang or Tido Financial.</p> <p>9. Justin Hein, Esq.</p> <p>10. Steven L. Simas, Esq, Simas and Associates, Ltd.</p>	<p>Witnesses:</p> <p>1. Reece Ventura</p> <p>2. Rodina Ventura</p> <p>3. Benjamin Villanueva</p>

<p>Exhibits:</p> <ol style="list-style-type: none"> 1. Creditor's AP complaint in this case 2. Defendants' Answer in this case 3. Creditor's Amended Claim 3/16/21 4. Selected pleadings, motion papers, orders, and exhibits marked from state court 5. Filings by Debtors or their two corporations with the California Secretary of State 6. Documents submitted by all parties and counsel to Russ Wunderli Mediation for 25 the mediation that resulted in the settlement of \$125,000 7. Emails and correspondence exchanged between counsel before and after the mediation at Wunderli Mediation Offices 8. Signed Mediator's Settlement Agreement 9. Signed Long Form Settlement Agreement 10. Signed Stipulation for Entry of Judgment After Default and Ten Days Notice 11. Banking records from Debtors or their two corporations 12. DSS documents concerning the emergency shut down of Defendants' two care homes for falsifying care home documents concerning the treatment and safety of the resident children (shows pattern and practice of Defendants) 	<p>Exhibits:</p> <ol style="list-style-type: none"> 1. Debtors' petition in Case No. 18-25342 2. Debtors' petition in Case No. 19-22653 3. Docket for Case No. 18-25342 4. Docket for Case No. 19-22653 5. Civil Court Settlement Agreement 6. Plaintiff's Proof of Claim 7. Settlement Agreement and Release of All Claims 8. Docket #201904301544, filed 4/30/19, Sacramento County Recorder, Abstract of Judgment, Involuntary Lien, pursuant to Case No. 34-2015-00187237. 9. Any court filings in either of the two State Court actions. 10. Various employment and wage records relating to Plaintiff. 11. Internal film of Plaintiff in violation of CA Penal Code 240 (Assault).
<p>Discovery Documents:</p> <ol style="list-style-type: none"> 1. Deposition testimony of Rodina Ventura, and selected marked exhibits 	<p>Discovery Documents:</p> <ol style="list-style-type: none"> 1. None identified (except as stated above in the Identification of Exhibits).

2. Deposition testimony of Reece Ventura, and selected marked exhibits	
3. Discovery - Requests for Production, propounded to and responded by Reece Ventura	
4. Discovery - Requests for Production, propounded to and responded by Rodina Ventura	
5. Discovery - Requests for Production, propounded to and responded to by All defendants in state court action	
Further Discovery or Motions:	Further Discovery or Motions:
1. None Identified	1. None Identified
Stipulations:	Stipulations:
1. None Identified	1. None Identified
Amendments:	Amendments:
1. None Identified	1. None Identified
Dismissals:	Dismissals:
1. None Identified	1. None Identified
Agreed Statement of Facts:	Agreed Statement of Facts:
1. None Identified	1. None Identified
Attorneys' Fees Basis:	Attorneys' Fees Basis:
1. CLC §§ 218.5, 226(f), and 1194(a)	1. CLC Section 218.5, 226(f), and 1194(a)
2. Cal. C.C.P. 1021, 685.040, 685.080	2. CCP 1021, CCP 685.040, and
3. Any other applicable provisions.	3. Any other applicable provisions.

<p>4. Plaintiff also requests that the court defer the issue of attorneys fees until the litigation is completed, and that the court allow the state court determine the award of attorney's fees for this Adversary Proceeding- Fed. R. Civ. P. 54, Fed. R. Bankr. P. 7054.</p>	
<p>Additional Items</p> <p>1. Plaintiff requests that the court “assign” a Tagalog-English Interpreter.</p> <p>For civil matters in bankruptcy court the parties provide their own interpreters.</p>	<p>Additional Items</p> <p>1. None Identified</p>
<p>Trial Time Estimation: Three (3) Days, with requested trial in August or September 2021.</p>	<p>Trial Time Estimation: Three (3) Days</p>

FINAL RULINGS

3. [20-21313-E-13](#) **TIFFANY MILLER** **MOTION FOR RELIEF FROM**
[JAC-1](#) **Mohammad Mokarram** **AUTOMATIC STAY**
ROCKY TOP RENTALS, LLC VS. **2-8-21 [27]**

Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 4, 2021. By the court’s calculation, 47 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Rocky Top Rentals, LLC (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a portable storage building, 10 x 20-foot storage shed (“Property”). The moving party has provided the Declaration of Rochelle Zelenka-Diatikar to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Tiffany Renee Miller (“Debtor”). Debtor is a lessee of the Property.

Movant argues Debtor has not made twenty two (22) post-petition payments, with a total of \$6,832.54 in post-petition payments past due. Declaration, Dckt. 32. Movant also provides evidence that there is one (1) pre-petition payments in default, with a pre-petition arrearage of \$310.57. *Id.*

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on March 9, 2021. Dckt. 34. Chapter 13 Trustee notes that Debtor is delinquent in the amount of approximately three (3) plan payments under the confirmed plan and that Debtor has voluntarily agreed to surrender the property.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$7,311.03 (Declaration, Dckt. 32), while the value of the Property is determined to be \$7,000.00, as stated in Schedules D filed by Debtor. Debtor does not assume the Rental Agreement in her Schedules. Dckt. 1.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay because Debtor and the Estate have not made post-petition payments for the property leased from Movant. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick (“the Chapter 13 Trustee”), the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

11 U.S.C. § 365(p)(3)

The Bankruptcy Code provides:

In any case under Chapter 11 in which the debtor is an individual and in a case under Chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.

11 U.S.C. 365(p)(3). Here, the court determines the automatic stay has been terminated because Debtor did not assume the lease as of the filing of this petition where Schedule G does not list Movant.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of, re-lease, sell, dispose of, or otherwise exercise its rights and interests in the Property.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court.

Though not stated with particularity in the Motion with respect to this additional relief dropped into the prayer, under the circumstances has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Rocky Top Rentals, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, under its personal property lease of the asset identified as a portable storage building (10 x 20-foot) (“Property”), and applicable nonbankruptcy law to obtain possession of, re-lease, sell, dispose of, or otherwise exercise its rights and interests in the Property

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is

waived for cause.

No other or additional relief is granted.

4. [20-22047-E-13](#) **HEATHER DEARSTYNE** **MOTION FOR RELIEF FROM**
[KMM-1](#) **Seth Hanson** **AUTOMATIC STAY**
TOYOTA LEASE TRUST VS. **2-12-21 [21]**

Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice and Office of the U.S. Trustee on February 12, 2021. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.

Toyota Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Rav-4, VIN ending in 9291 ("Vehicle"). The moving party has provided the Declaration of Hillary Coffelt to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Heather Ann Dearstyne ("Debtor"). Debtor is the lessee.

Movant argues that the lease matured on December 2020, with Debtor having the purchase option in the amount of \$15,304.85. Declaration, Dckt. 25.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$15,304.85 (Declaration, Dckt. 25), while the value of the

Vehicle is determined to be \$0.00, as stated in Schedules A/B filed by Debtor.

Debtor has surrendered the Property and Lessor is currently in possession of the property as of December 1, 2020. *Id.*

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, under its personal property lease of the asset identified as a 2018 Rav-4, VIN (“Property”), and applicable nonbankruptcy law to obtain possession of, re-lease, sell, dispose of, or otherwise exercise its rights and interests in the Property

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Toyota Lease Trust (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, pursuant to the personal property lease for Vehicle, identified as a 2018 Rav4, VIN ending in 9291 (“Vehicle”), to obtain possession of, re-lease, sell, dispose of, or otherwise exercise its rights and interests in the Property.

No other or additional relief is granted.